



**Minutes of the State Board of Health
August 12, 2009**

Cherberg Building, Capitol Campus, 304 15th Ave SW, Olympia, WA 98501

These minutes are not verbatim. Recorded audio CDs are available upon request.

SBOH members present:

Treuman Katz, Chair
The Honorable John Austin, PhD
Keith Higman, MPH
Frankie T. Manning, MN, RN
Patricia Ortiz, MD

Mel Tonasket
Mary Selecky
Karen VanDusen
The Honorable Donna Wright
Diana T. Yu, MD, MSPH

SBOH members absent:

State Board of Health Staff present:

Craig McLaughlin, Executive Director
Desiree Robinson, Executive Assistant
Heather Boe, Communications Consultant
Christy Curwick, Health Policy Analyst

Tamara Fulwyler, Outreach Coordinator
Ned Therien, Health Policy Analyst
Tara Wolff, Health Policy Analyst
Mike Tribble, Assistant Attorney General

Guests and Other Participants:

Bill Adamo, Riverview School District
Jennifer Aspelund, Citizen
Peter Browning, Skagit County
Dan Caldwell, McKinstry Co.
Mitch Denning, Alliance of Ed. Assoc.
RaeAnn Engdahl, Washington Education Association
Denise Frisino, Former Teacher
Rob Harvey, Mukilteo School District
Sara Hoover, Washington State Risk Management Pool
Judy Jennings, Washington Federation of Independent Schools
Peggy Johnson, Department of Health
Rick Jones, North Kitsap School District
Scott Kellams, Canfield & Associates

Nancy Napolilli, Department of Health
Kathy O'Toole, Washington Education Association
Mark Rowe, Public Health Seattle & King County
Art Starry, Thurston County Health Department
Sandi Swarthout, Puget Sound School Coalition
Jill VanGlubt, Washington Education Association
G. Robert Van Slyke, Bethel School District
Charles Wu, Public Health Seattle & King County
Todd Yerkes, Public Health Seattle & King County

Treuman Katz, SBOH Chair, called the public meeting to order at 1:00 p.m. and read from a prepared statement (on file).

1. APPROVAL OF AGENDA*Motion: Approve August 12, 2009 agenda**Motion/Second: Ortiz/Wright Approved unanimously***2. ADOPTION OF JULY 8, 2009 MEETING MINUTES***Motion: Approve the July 8, 2009 minutes**Motion/Second: Austin/VanDusen. Approved unanimously***3. CHAPTERS 246-366 AND 246-366A WAC, HEARING ON SCHOOL RULE**

Keith Higman, SBOH Vice Chair, introduced the school rule hearing. He recalled that at the Board's June 2009 meeting it approved a motion to direct the SBOH Environmental Health (EH) Committee to work with staff to file an amended rule proposal. He said the EH Committee met with staff to develop a proposal that was filed July 1 with two alternatives. He said that staff worked diligently to identify mechanisms for future implementation of the rule that would respect the Legislature's actions and would offer alternatives for incrementally adopting portions of the rule if funding was allocated. He said that the EH Committee was recommending a blend of the alternatives that would put the rule on the books without being implemented until legislative actions allowed. He asked Ned Therien, SBOH staff, to explain the details of the EH Committee's recommendation.

Mr. Therien first described the materials behind Tab 03 in Board members' packets. He gave a brief history of the rule proposal since hearings in 2008 on an earlier proposal. He explained that legislative action in the 2009 session included a proviso in the budget bill that prohibits the Department of Health and SBOH from implementing new or amended rules for school facilities without funding for public schools. Therefore, when the Board reconsidered the rule proposal from 2008 at its June 2009 meeting, it passed a motion directing staff to revise the proposal, working with the EH Committee, and file a supplemental CR102 reflecting the legislative action. He said the supplemental proposal filed July 1, 2009 contained two alternatives. He explained the differences in the alternatives. He said that since the July 2009 Board meeting, when the Board was first briefed about the two alternatives in the supplemental proposal, the EH Committee has worked with staff to develop a recommendation that blends concepts from the two alternatives. He pointed out the recommendation was in Attachments 1 and 2 to the cover memo in the Board's packet. The intent is to use the implementation method from Alternative A, the CR103 process, for setting the effective date(s) and use the extra language from Alternative B, which explains legislative restrictions and contains notification provisions, to keep interested parties more clearly informed about implementation dates. He said that if the Board adopted the rule this day, staff would file a CR103 rule order with an effective date determined by the Board. If legislative restrictions for implementation existed as that effective date approached, staff would ask direction from the Board for filing a supplemental CR103 to postpone the effective date for all or parts of the rule. As new rule provisions could be implemented that would supersede provisions of the existing rule, the existing rule would be repealed by filing new rule orders, possibly section by section. He explained amendments to rule language recommended by the EH Committee. Mr. Therien described four comments received about the supplemental CR103. He said that staff did not recommend any changes to the proposal from the EH Committee in response to the comments.

Chair Katz thanked Mr. Therien for his presentation and proposed to the Board that members first ask clarifying questions and then discuss the topic before taking testimony and action on the motion. Craig McLaughlin, SBOH Executive Director, clarified a statement in Mr. Therien's presentation,

saying that OSPI's suggested changes about notification had been incorporated into the EH Committee's recommendation. Mel Tonasket, SBOH Member, said his preference would be for the Board to hear public testimony before having its discussion. Chair Katz asked the Board members how they felt about that suggested process and received general approval. Mr. McLaughlin suggested the Board might wish to ask any questions for clarification of the proposal before moving to public testimony. Vice Chair Higman commented that the recommendation in front of the Board would be labor intensive for staff because it could involve multiple notifications, but would allow the rule to be implemented incrementally. Diana Yu, SBOH Member, said that this way forward commits future members of the Board to a continuing workload. Mr. McLaughlin commented that this proposal would not require future Board members to spend as much time becoming subject experts. Chair Katz asked the Board members if there were any other questions for clarification. Hearing none, he opened public testimony and read a prepared statement (on file).

Rick Jones, Superintendent of North Kitsap School District, commented that he appreciated the difficult decision making position the Board was in. He said his school district is facing its sixth year of budget cuts. He said that implementation for many districts would be by a superintendent and a small number of staff. He said it would be challenging for most school districts to implement the rule without consultants. He said he believed all parties needed to work together to seek sustainable funding for implementation of the rule. He asked that the cost analysis be reviewed to try to reach better agreement by all stakeholders, which could then be carried to legislators in a uniform message. He said that since it is not likely there would be funding for the whole rule at once, there should be collaboration on what provisions of the rule should be phased in first. He mentioned drinking water testing as an example.

Dan Caldwell, McKinstry Company, Energy and Facilities Group, said he consults with schools to optimize use of funding, including regarding indoor air quality. He said his company has a lot of experience in the field of indoor air quality. It is involved in design, construction, operation, and maintenance of air handling systems. He said he thinks the definition of "air contaminants of public health importance" and provisions in section 095 in the rule proposal are not specific enough to provide clear design guidance that would be interpreted consistently. He expressed concern regarding provisions in proposed rule section 095(4) about limiting student exposure to air contaminants of public health importance from office equipment. He said this provision would be difficult to interpret consistently and it might not be possible to meet this regulation by relocating to another place in the room. He said he thought this would mean schools would need a thorough assessment of the ventilation status of all their equipment. He said this might require source ventilation at great cost. He recommended revising 095 to refer to pertinent ASHRAE [American Society of Heating, Refrigerating and Air-Conditioning Engineers] standards. He extended an offer to help develop such rule language. At Member Tonasket's request, Chair Katz asked if he had written testimony. Mr. Caldwell said he did not have a copy with him suitable to submit.

Jill VanGlubt, Health and Safety Coordinator, Washington Education Association (WEA), expressed disappointment about legislative actions, while recognizing the seriousness of the state budget crisis. She commented about the testimony of Dan Caldwell by asking a rhetorical question about why his company did not provide suggestions earlier in the rule making process. She commented that his clients had wanted the term "air contaminants of public health importance" left somewhat vague. She encouraged the Board to adopt the rule this day and supported the blended proposal from the EH Committee. She said WEA understands the need for additional legislative action and will support efforts to get funding.

Denise Frisino, citizen, expressed disappointment that this rule is not the product for which she hoped. She spoke about a teacher with a bucket in her classroom to catch roof leaks. She asked the Board to pass the rule this day. She said she is hoping that Board members continue to work to get the rules in place.

Peter Browning, Skagit County Public Health Director, said he participated in the rule development process and thought it was participatory and the rules are scientifically sound, but expressed concerns about the next steps. He said he did not think the cost estimates were complete. He said Skagit County estimated it would cost them about \$122,000 per year to implement the rule. He asked whether it was assumed that schools would have money in their budgets to fund local health inspections. He asked that another fiscal analysis be prepared with input from all counties and an explanation of how much schools are expected to pay of local health program costs. He said he thought it was unrealistic to expect local health to implement the rule in 2011 without funding. He asked that the Board create a prioritization model for the various provisions of the rule. He said that local health programs also need funding for technical training, which he said is important to help achieve statewide consistency. He provided a written copy of his testimony.

Rob Harvey, Mukilteo School District, read a letter (not previously submitted) from Debra Fulton, Executive Director of Support Services. Her district serves 14,000 students in 18 schools and a technical skills center. She expressed concern for various facility maintenance costs. She estimated one-time rule costs at \$450,000 and ongoing costs at \$162,000 annually for operation and maintenance in her school district. She further expressed concern about the reliability of the cost estimates prepared by the Department. She wrote it was important that implementation be tied to the State providing funding. She encouraged the Board to refine the cost estimates. She expressed concern that part of what was driving costs was unnecessary duplication of regulation, giving an example of the county building department. Mr. Harvey provided a written copy of the letter.

Bill Adamo, Director of Business and Operations, Riverview School District, said his district serves 3,000 students in eight schools. He said that his district agrees with the goal of healthy schools and described a \$10,000,000 renovation project the middle school is currently undergoing. He expressed concern about the significant budget challenges his district is facing. He said that the estimated costs of the rule to his district would include a \$67,000 one-time cost and \$44,000 annually for maintenance. He said he appreciated the Board recognizing the need for State funding to implement the rule, but encouraged the Board to relook at the estimates prepared by the Department. He said that a more robust fiscal analysis was needed for each section of the rule. He encouraged working to reach consensus about the costs. He said a more comprehensive analysis was needed to inform legislators and others to help assure adequate funding to school districts and local health jurisdictions for implementing the rule.

Jennifer Aspelund, citizen, said she was disheartened that even if the rule is adopted this day, it cannot be implemented. She expressed being confused about Alternatives A and B. She expressed confusion about the Board's authority to adopt rules that cannot be implemented without funding. She expressed concern that school districts appear to have money for litigation when teachers and children get sick but not for fixing problems in schools. She said she asked her local health agency how she could get a compliance issue investigated regarding the existing school rule. She said she was referred to a local health agency web page that said inspections would be conducted periodically when requested by school authorities. She expressed dismay with that because she said 98% of the

time the school authorities are the problem. She asked the Board to pass the rule today and expressed hope for future funding.

Judy Jennings, Executive Director, Washington State Federation of Independent Schools, said her organization represents 528 private schools serving 84,000 students. She said she supported the Board adopting the recommended proposal of blended Alternatives A and B. She stated that private schools are also laboring under costs. Enrollments are down due to the poor economy. These schools would have a very difficult time complying with the rules if they took effect immediately. She commented about the importance of cost mitigation for smaller schools. She expressed concern about potentially inconsistent interpretation by local health agencies for allowing cost mitigation. She asked the Board to consider how the rules would apply to schools housed in faith-based facilities.

Chair Katz noted that there appeared to be no additional public testimony. He opened discussion by the Board. Member Austin asked if now was the time to make a motion for discussion.

Motion: The Board adopts Alternative B of the rule making proposal WSR 09-14-136, with amendments considered and approved by the Board today. The Board directs staff to file an order of rule making with an effective date of July 1, 2010. The Board further directs staff to develop rule filing orders and amended orders, as necessary, to allow provisions of proposed chapter 246-366A WAC to become effective and provisions of chapter 246-366 to be repealed when superseded, according to potential actions of the Legislature that could allow implementation of new and amended provisions.

Motion/Second: Austin/Tonasket.

Karen Van Dusen, SBOH member, asked if any Board members had questions about the EH Committee's recommended amendments to the rule proposal and whether there were additional suggested amendments. There were no questions about the EH Committee's proposed amendments or suggestions for additional amendments. Chair Katz then asked Board members if they had general questions. Donna Wright, SBOH member, asked whether further work was needed by the EH Committee to address standards, prioritization, and funding issues addressed in testimony today. Mr. McLaughlin responded that he understood a lot more work would need to be done by staff to develop a strategy for working with legislators about funding for implementation of the rule. He said this would require more work with stakeholders too. He directed members' attention to the intent language in Alternative B [WAC 246-366A-001(3)] and explained that the legislature would decide if, when, and how much of the rule would be implemented. Diana Yu, SBOH member, asked how the EH Committee envisioned local health jurisdictions would be guided to implement the rule. Vice Chair Higman responded that the EH Committee envisioned local health jurisdiction flexibility, with guidance coming from the Department of Health. He said there are many questions to be resolved. Mr. McLaughlin pointed out that the training provisions in the proposed rule are stronger than in the existing rule and include a stakeholder technical advisory committee. Member Yu expressed concern about the state of funding to local public health, but said that local health jurisdictions are creative and are good at collaborative programs. She said that this proposal is a refinement of an existing rule to make it more workable. She said that since children are required to go to school, they should not be forced to be in a place that might adversely affect their health. She explained that public health, like education, is making difficult prioritization decisions due to funding restrictions. She said that public health could charge fees to offset its costs, but that schools need funding to pay those fees. She said schools could not educate children unless they are healthy. Deputy Secretary Bill White commented that the Department could help with training to create greater consistency across

local health jurisdictions. He used an example of the food code passed a few years ago. He said it would take a lot of work, but the training would not be developed until a rule is adopted. Member Yu asked if local health would be required to develop in-house expertise, or could they use the expertise of local building officials and others? Craig McLaughlin responded that the rule proposal would encourage collaboration between agencies. He said there are some parts of the rule that are not addressed by other types of agencies. Member Yu said she understood that local health agencies could accept declaration from other professionals such as engineers. Member VanDusen commented that that this rule does not duplicate other rules. She explained that a detailed analysis was conducted three years ago and all duplicate requirements were removed from the rule. She reminded Board members that much of what is in the new rule came from the existing rule. She said that many of the costs heard about today during testimony are the result of requirements from the existing rule and did not need to be addressed in the cost analysis. She said the new rule clarifies requirements and is science based. She said that she thinks the rule had a very robust cost analysis and reflects a worst-case scenario. She said that a whole year was spent trying to reach consensus on the cost analysis. She said she did not know of any other rule in state government that had such an extensive cost analysis.

Craig McLaughlin suggested that before the Board voted on approving the rule proposal it first consider approving the amendments proposed by the Board's EH Committee.

Motion: The Board adopts amendments to Alternative B of the rule making proposal WSR 09-14-136 as recommended by its Environmental Health Committee in Attachments 1 and 2 to the Committee's memo to the Board this day.

Motion/Second: Ortiz/Manning. Approved unanimously

Member Tonasket called for the question on the earlier motion by Member Austin. It was approved unanimously.

Member Tonasket thanked the parents, teacher, and other advocates who followed this rule throughout the process. He said he wished the Board could have done more. He thanked Chair Katz and the Environmental Health Committee. He also wished to thank the schools for their efforts to improve their schools during these times.

Chair Katz thanked the members of the EH Committee for all their work on this rule. Member Yu acknowledged former member David Crump's contributions to this rule. She appealed to the schools to seek grants and to try to work toward the goals of these rules, even before these rules can take effect. Member VanDusen encouraged schools and local health agencies to implement the existing 40-year old rule to improve school conditions without waiting for the new rule to become effective.

The Board took a break at 2:41 p.m. and reconvened at 2:51 p.m.

4. SBOH ANNOUNCEMENTS AND OTHER BOARD BUSINESS

Mr. McLaughlin stated that he did not have any news on Chair Katz's replacement or the renewals of two Board positions. He noted that Chair Katz's term was up and he was stepping down from the Board. He said that would make Vice Chair Higman the Acting Chair until and unless something different comes from the Governor's office.

Mr. McLaughlin stated that staff would be working on letters to go out to other state agencies regarding issues related to the school rules. He said these would include letters to the Building Code Council and OSPI. He asked for a sense of the Board whether those letters could go out with approval of the EH Committee and the Chair, which indicated that would be acceptable.

He then described a draft report about health disparities and academic achievement that was not quite ready to be released. The Board, Department of Health, and OPSI are producing the report. He asked the Board for permission to delegate approval of the report to Member Manning and the Chair without requiring a vote of the whole Board at a future meeting. Frankie Manning, SBOH Member, further spoke in support of the report and encouraged the Board to support it. Member Yu asked whether she would have a chance to review the report before approval. Mr. McLaughlin responded that he would be able to share a copy before the Board would need to express its support. Deputy Secretary White asked what the purpose of the report is. Mr. McLaughlin said it is a compilation of what we know and some recommended practices and policy options. Member Manning commented that the report contains information about programs that could be used by others as a resource.

Mr. McLaughlin reported sending a letter to Governor Gregoire about the Board's hope that health reform includes funding for public health initiatives. He said it was originally drafted for sending to the State's Congressional delegation. He said that he would be preparing a letter to send to local government to encourage support for public health and would be seeking comments from some Board members. He said that Chair Katz has agreed to review this draft letter on behalf of the Board before being sent. Member Yu asked whether is necessary to send such a letter to local boards of health. Vice Chair Higman commented that the last letter got a lot of attention by the public health community. He said he forwarded a copy to his local board of health. Member Yu said it was not as important to educate local boards of health as it was for other local elected officials. Mr. McLaughlin reminded the Board of its discussion at its July meeting about the issue of encouraging local decision makers to preserve as much of public health as possible during these bad economic times. He said that he wanted to be sure to get the tone of the letter right, so would be asking for Board member review.

5. RECOGNITION OF THE CONTRIBUTIONS TO THE WASHINGTON STATE BOARD OF HEALTH BY TREUMAN KATZ

Vice Chair Higman said this was a sad day for the Board because it appeared to be the last meeting for Chair Katz. He expressed appreciation for Chair Katz's contributions to the Board including his professionalism; compassion; and orderly, well-run meetings. He said that he has considered Chair Katz a mentor to him. He read a resolution into the record recognizing Chair Katz's service.

Motion: *Adopt resolution 09-02.*

Motion/Second: *Tonasket/ VanDusen. Approved unanimously, except Chair Katz abstained.*

Chair Katz commented that he declined a second term on the Board because he has purchased a second home in California and does not think it is possible to give full attention to the Board from that distance. He said that he has served on many Boards, but this one has been different. He expressed respect for the public process of this Board. He expressed appreciation for his working relationship with Mr. McLaughlin. He said that one of the changes he made that he hopes will be continued is that the Executive Director sits next to the chair at Board meetings. He encouraged

Board members to express their opinions to the new Chair about the style and structure of meetings. He expressed respect and affection for the other Board members.

Member Tonasket said he appreciated Chair Katz's patience and calm chairing style. He said that he has enjoyed the professionalism of this Board. Deputy Secretary White expressed appreciation for the improved relationship between the Board and the Department. Member Manning said she agreed with all these sentiments, has appreciated his leadership, and hopes Chair Katz will come back and visit the Board. Member Yu commented that she appreciated being made to feel respected and heard by Chair Katz. Patricia Ortiz, SBOH member, said she felt Chair Katz to be a very caring person and he brought that attitude to the Board. Mr. McLaughlin thanked Chair Katz for helping him grow professionally. Member VanDusen said that she appreciated how seriously Mr. Katz took staff evaluations and that that he struck her as a very kind man. Member Wright thanked Chair Katz for making her feel welcome in her role as a new Board member. Member Austin commented that Chair Katz's time with the Board had been way too short.

ADJOURNMENT

Keith Higman, SBOH Acting Chair, adjourned the meeting at 3:36 p.m.

WASHINGTON STATE BOARD OF HEALTH

Keith Higman, Chair